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John R. Foster (JF3635)

ECF CASE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PRESTIGIOUS SHIPPING CO. LTD.,

Plaintiff,

-against-

AGROCORP INTERNATIONAL PTE LTD.,

Defendant.

**AFFIDAVIT IN OPPOSITION
TO MOTION FOR
COUNTERSECURITY**

STATE OF NEW YORK)
 : ss:
COUNTY OF NEW YORK)

JOHN R. FOSTER, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and am an officer of Waesche, Sheinbaum & O'Regan, P.C., attorneys for the Plaintiff herein. I submit this affidavit in opposition to the pending motion by Defendant Agrocorp International Pte. Ltd. for countersecurity pursuant to Supplemental Rule E(7).

2. First, to clarify a confused point in Defendant's papers, the amount that has been attached by the Plaintiff is \$2,160,761.06. Of this amount, \$753,532.09 (the amount mentioned at pages 9 and 10 of Defendant's memorandum) was attached in August 2007 at American Express Bank, with the balance at Bank of America on October 1.

3. With respect to Prestigious Shipping's settlement of the cargo claims from the voyage at issue, mentioned at pages 4-5 of the accompanying memorandum, I am advised by Prestigious Shipping that in June 2006 it complained to the Chittagong Chamber of Commerce and Industry that it had settled with the receivers on an inflated invoice value. The receivers had entered a much lower value at the Customs House in Chittagong and accordingly paid a lesser customs duty. At the invitation of the Chittagong Chamber of Commerce and Industry, Prestigious Shipping and the receivers then met in the offices of the President of the Chamber, who advised that the invoice value is reduced at the Customs House to save on duties. Therefore, in his view, the argument by Prestigious Shipping was not valid. This meeting was held on August 20, 2006. Prestigious Shipping has had no further contact with the receivers, and has taken no legal action against them.

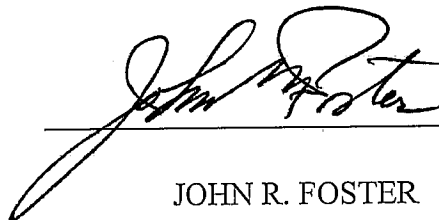
4. With respect to the chronology listed at page 8 of the accompanying memorandum, most of these events are supported by the affidavit of opposing counsel or the Court's own records. As to those items not so supported, I am advised by Prestigious Shipping's solicitors that

- Prestigious Shipping demanded arbitration of its claim in September 2006. *See* attached **Exhibit 1**.
- In the London arbitration Agrocorp asserted counterclaims on September 7, 2007, *i.e.*, three days after this Court's ruling of September 4.
- In response to these counterclaims, Prestigious Shipping has moved to strike them as time-barred. Agrocorp's response to this application is due today, October 19.

5. Subsequent to counsel's conference with the Court on September 28, I wrote to opposing counsel on October 5 with an offer by Prestigious Shipping to provide

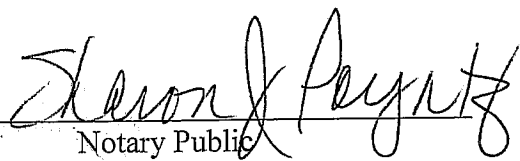
countersecurity to Agrocorp for \$50,000 to cover its taxable costs in the London proceeding.

This proposal was rejected by Agrocorp.



JOHN R. FOSTER

Subscribed and sworn to before me this
19th day of October, 2007



Notary Public

SHARON J. POYNTZ
NOTARY PUBLIC, State of New York
No. 43-4820992 Qualified in Richmond County
Certificate Filed in New York County
Commission Expires February 28, 2011

EXHIBIT 1

Your Reference :
Our Reference : 2006155418JB/GY/SA/hh

By Fax & Hand
(Fax No. 6534 1426)

21 September 2006

AGROCORP INTERNATIONAL PTE LTD
133 New Bridge Road
#22-01/02
Chinatown Point
Singapore 059413

Dear Sirs,

M.V. "PRESTIGIOUS" NOW KNOWN AS "VICTORY 2"
CHARTERPARTY DATED 21st FEBRUARY 2005
WITH ADDITIONAL CLAUSES

NOTICE OF ARBITRATION

- (1) We act for M/s Prestigious Shipping Co Ltd, the owners of the ship or vessel "PRESTIGIOUS" now known as "VICTORY 2" (the "Vessel").
- (2) Pursuant to a charterparty on Sugar Charter Party 1999 form with additional clauses dated 21st February 2005 between our clients and M/s Agrocrop International Pte Ltd (the "Charterparty") and Bills of Lading No. S-1 - S-23 dated 10th April 2005 (the "Bills of Lading"), a cargo of 430 bagged rice of sugar, weighing a total of some 21,500.000 MT (the "Cargo") was loaded onboard the Vessel and shipped for carriage from Santos to Chittagong in or about 15th April 2005.
- (3) The Vessel was at all material times in the registered ownership of our clients.
- (4) The Bills of Lading incorporate the terms of the Charterparty including the Law and Arbitration Clause.
- (5) Disputes and differences having arisen between the parties.
- (6) The arbitration agreement pursuant to Clauses 31 and 53 of the Charterparty provide that that all disputes from time to time arising out of, or in connection with, this Charterparty shall be referred to arbitration in London pursuant to the London Maritime Arbitrators Association and governed by English law.



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Danny Chua
Mabel Tan
Kang Kim Yang
Kenneth Lie
Tan Hui Tsing
Gerald Yee
K. Murali Pany

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- (7) The said arbitration clauses also provide that unless the parties agree forthwith on a single arbitrator, be referred to the final arbitrament of two arbitrators, one to be appointed by each of the parties, with power of such arbitrators to appoint an umpire.
- (8) Unless otherwise agreed, we propose a sole arbitrator to take conduct of the said arbitration proceedings.

TAKE NOTICE that on behalf of Messrs Prestigious Shipping Co. Ltd. (hereinafter referred to as "the Claimants"), we have appointed to be the sole arbitrator Mr. Clive Aston, whose details are set out as follows:-

Mr. Clive Aston
30 Hobbs Court
2 Jacob Street
London, SE1 2BG
Telephone: (44) 20 7064 1622
Facsimile: (44) 20 7064 1633
Email: cliveaston@cliveaston.com

Should you not agree to our proposal of a sole arbitrator, we shall on our part appoint Mr. Clive Aston and hereby require you within fourteen (14) clear days after the service of this notice to appoint an arbitrator.

Or, if you fail to appoint an arbitrator, we or our appointed attorneys shall apply to the English High Court to compel arbitration and/or for the court to appoint an arbitrator on your behalf.

Yours faithfully,



Gerald Yee / Sue Ann Gan
Email: geraldyee@jtb.com / sueanngan@jtb.com

cc clients

Joseph Tan Jude Benny

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